

1 EDDIE R. JIMENEZ (SBN 10376)
2 ejimenez@aldridgepite.com
3 **ALDRIDGE PITE, LLP**
4 7220 South Cimarron Road, Suite 140
5 Las Vegas, NV 89113
6 Telephone: (858) 750-7600
7 Facsimile: (619) 590-1385
8 **Mailing Address:**
9 4375 Jutland Drive, Suite 200
10 P.O. Box 17933
11 San Diego, California 92177-0933

12 Attorneys for Fifth Third Mortgage Company

13 **UNITED STATES BANKRUPTCY COURT**
14
15 **DISTRICT OF NEVADA**

16 In re
17 SCHULTE PROPERTIES LLC,
18 Debtor.

19 Case No. 18-12734-mkn

20 Chapter 11

21 **SUPPLEMENTAL DECLARATION OF**
22 **GREG CAMPBELL IN SUPPORT OF**
23 **FIFTH THIRD MORTGAGE**
24 **COMPANY'S MOTION FOR**
25 **PROTECTIVE ORDER OR, IN THE**
26 **ALTERNATIVE, MOTION FOR**
27 **MODIFICATION OF SUBPOENA [DKT**
28 **NO. 863]**

29
30 I, Greg Campbell declare:

31 1. I am over the age of 18 and am employed as an Attorney by Aldridge Pite, LLP
32 (“Aldridge Pite”), under the supervision of designated counsel, Eddie Jimenez, attorneys for Fifth
33 Third Mortgage Company (“Fifth Third”) in this proceeding. I have personal knowledge of the
34 matters set forth in this declaration and, if called upon to testify, could and would competently
35 testify thereto.

36 2 As part of my job responsibilities for Aldridge Pite, I have personal knowledge of
37 and am familiar with the records maintained by Aldridge Pite in connection with this matter and

1 the procedures for creating those types of records. I have access to and have reviewed the books,
2 records, and files of Aldridge Pite that pertain to this matter.

3 3. The information in this declaration is taken from Aldridge Pite's business records
4 regarding this case. The records are: (a) made at or near the time of the occurrence of the matters
5 recorded by persons with personal knowledge of the information in the business record, or from
6 information transmitted by persons with personal knowledge; and (b) kept in the course of
7 Aldridge Pite's regularly conducted business activities. It is the regular practice of Aldridge Pite
8 to create and maintain such records.

9 4. Pursuant to Aldridge Pite's records, Debtor served *Requests for Production of*
10 *Documents* ("Discovery Requests") on Fifth Third.

11 5. On May 29, 2020, Aldridge Pite responded to the Discovery Requests on Fifth
12 Third's behalf with hundreds of pages of documents ("Discovery Responses"). Specifically,
13 Aldridge Pite provided Debtor with copies of the loan documents, filed claim, filed pleadings,
14 payment histories, monthly statements, escrow statements, and communications with the
15 borrower. However, Aldridge Pite objected to several requests as irrelevant, burdensome,
16 overbroad, vague, proprietary, confidential, or subject to privilege.

17 6. Debtor failed to meet and confer with Aldridge Pite regarding the Discovery
18 Responses, file a motion to compel seeking additional production, or request a ruling on Fifth
19 Third's objections to the Discovery Requests. In the meantime, the discovery period expired.

20 7. On or about May 28, 2021, the Debtor filed a *Notice of Issuance of Subpoena*
21 *Duces Tecum* ("Subpoena") requesting production of documents from twenty-seven (27) loan
22 servicers/creditors, including Fifth Third, related to the Debtor's dozens of real properties. The
23 Debtor now seeks blanket, identical, production of all documents at outlined in the Motion. (See
24 Subpoena, Exhibit 88).

25 8. Following the issuance of the Subpoena, Aldridge Pite sent a Meet & Confer letter
26 to the Debtor's counsel seeking to resolve the Subpoena and seeking clarification of any
27 discoverable documents the Debtor believed Fifth Third failed to produce. To date, Aldridge Pite
28 has yet to receive a substantive response from the Debtor's counsel.

1 9. On June 11, 2021, Aldridge Pite filed a *Motion for Protective Order or, in the*
2 *Alternative, Motion for Modification of Subpoena* (“Motion”). (Dkt No. 861). In the Motion Fifth
3 Third asserted:

- 4 • The Parties already engaged in extensive discovery, including production of documents,
5 following the hearing on approval of the Disclosure Statement in 2019. Specifically, Fifth
6 Third responded to Requests for Production of Documents, and provided Debtor with
7 hundreds of pages of documents at great time and expense. The Debtor now seeks
8 production of the **same documents**. As a result, Fifth Third asserted the documents Debtor
9 requested were either: (i) already produced by Fifth Third; (ii) equally available to the
10 Debtor; or (iii) objectionable as outlined in Fifth Third’s Responses to the original
11 production requests.
- 12 • To the extent Debtor was dissatisfied with Fifth Third’s Responses to the production
13 requests, Debtor failed to meet and confer regarding the Responses, file a motion to compel
14 seeking additional production, or request a ruling on Fifth Third’s objections to the
15 discovery requests. In the meantime, the discovery period expired.
- 16 • The documents requested are overbroad and unlimited in scope. Thus, the requests are
17 calculated to annoy, embarrass, or oppress Fifth Third. To comply with these requests
18 (again) would be an undue burden and expense on Fifth Third. To the extent the Court
19 determines additional document production is warranted, Fifth Third requested an order
20 modifying the scope of Subpoena as explained in the Motion.

21 10. On June 16, 2021, Aldridge Pite sent **a second follow up** letter to the Debtor’s
22 counsel seeking to resolve the Subpoena, and seeking clarification of any discoverable documents
23 the Debtor believed Fifth Third failed to produce. Further, Aldridge Pite requested the withdrawal
24 of the Subpoena.

25 11. On or about June 30, 2021, Debtor filed a *Limited Opposition to Motion for*
26 *Protective Order* (“Opposition”). (Dkt No. 870). In the Opposition, Debtor alleged: (i) Debtor is
27 not requesting documents already produced in this matter; (ii) Debtor is only requesting

1 documents, which have yet to be provided or are not accessible by the Debtor; and (iii) Debtor is
 2 requesting documents to have a complete loan file to facilitate the filing of claim objections.

3 12. On July 1, 2021, Aldridge Pite sent a **third follow up** letter to the Debtor's counsel
 4 seeking to resolve the Subpoena, and seeking clarification of any discoverable documents the
 5 Debtor believed Fifth Third failed to produce. Further, Aldridge Pite requested the withdrawal of
 6 the Subpoena. To date, Debtor has yet to provide Aldridge Pite with a substantive response. Nor
 7 has the Debtor withdrawn the Subpoena.

8 13. On July 13, 2021, Aldridge Pite filed a *Reply to Debtor's Limited Opposition to*
 9 *Motion for Protective Order* ("Reply"). (Dkt No. 877). In the Reply, Fifth Third asserted the
 10 requested documents were already produced, equally available to the Debtor, or not in Fifth
 11 Third's possession.

12 14. On July 28, 2021, the Court held an initial hearing on the Motion for Protective
 13 Order. At the hearing, Debtor requested a continuance to review the documents produced by Fifth
 14 Third.

15 15. On July 28, 2021, Aldridge Pite received a response from the Debtor stating:
 16
 17 "The proof of claim contains the note, deed of trust, and some orders from
 18 Melani Schulte's prior bankruptcy. There is not a single statement or any
 19 transaction history. Therefore we need the following:
 20
 21 Misty Morning – (1) monthly mortgage statements from January 2010
 22 forward; (2) an escrow analysis from January 2010 forward (or at least from
 23 the prior confirmation order that was entered on March 8, 2011 forward)
 24 showing how payments were applied and at what interest rate. If Fifth Third
 25 did not have the loan that far back, then we want the records from the
 26 predecessor servicer that are in Fifth Third's possession. My understanding
 27 is that Fifth Third has had the loan since at least 2009; (3) I also need copies
 28 of the IRS Form 1098 issued by Fifth Third for the property from 2010 to
 2020."

23 16. On July 29, 2021, Aldridge Pite sent a **fourth follow up** letter to Debtor's counsel
 24 outlining the history of document production for the Subject Loan. Further, Aldridge Pite
 25 informed the Debtor the monthly statements and payment histories were previously produced to
 26 the Debtor (either through the discovery in 2020, the settlement conferences, or originally sent to
 27 the Debtor through regular servicing). Accordingly, Aldridge Pite asserted the documents were
 28

1 already in the Debtor's possession or equally available to the Debtor. In addition, Aldridge Pite
2 informed Debtor's counsel if Debtor is seeking documents from a prior servicer, Debtor may
3 serve discovery on said third parties.

4 17. On August 6, 2021, Aldridge Pite sent a **fifth follow up** letter to the Debtor's
5 counsel seeking to resolve the Subpoena. Specifically, Aldridge Pite requested the status of: (1)
6 the filing of the notice of withdrawal of the Subpoena; (2) Debtor's review of the documents
7 provided and summary of produced discovery; and (3) which discoverable documents (exactly)
8 Debtor alleged Fifth Third failed to produce.

9 18. On August 11, 2021, the Court held a **second hearing** on the Motion for Protective
10 Order. At the hearing, Debtor requested another continuance to review the documents produced
11 by Fifth Third.

12 19. On August 18, 2021, Aldridge Pite reproduced many of the documents pursuant
13 to the Debtor's request.

14 20. On August 18, 2021, Aldridge Pite sent a **sixth follow up** letter to the Debtor's
15 counsel seeking to resolve the Subpoena. With the recent production and prior production, Fifth
16 Third asserted it produced the requested documents in its possession (either through the 8/18/21
17 reproduction, discovery in 2020, the settlement conferences in 2020, or originally sent to the
18 Debtor through regular servicing). Upon Debtor's review of the documents provided thus far and
19 summary of produced discovery, Aldridge Pite requested clarification regarding which
20 discoverable documents (exactly) Debtor is still seeking from Fifth Third.

21 21. On September 1, 2021, Aldridge Pite sent a **seventh follow up** letter to the
22 Debtor's counsel seeking to resolve the Subpoena.

23 22. On September 15, 2021, the Court held a **third hearing** on the Motion for
24 Protective Order. At the hearing, Debtor requested another continuance to review the documents
25 produced by Fifth Third.

26 23. On September 22, 2021, Aldridge Pite received a response from the Debtor
27 regarding the production stating:

28

1 1. Mortgage Statements (Subpoena Item 5)

2010-2014 - I am missing all mortgage statements from January 2010
 2 through December 2014.
 2015 - I have all of statements for 2015
 3 2016 – I have January through May 2016, as well as December 2016. I am
 3 missing June through November, 2016
 4 2017 – I have January through June, 2017. I am missing July through
 4 December, 2017
 5 2018 – I have no statements. I am missing January through December 2018
 5 2019- I have no statements. I am missing January through December 2019
 6 2020- I have no statements. I am missing January through December 2020
 6 2021- I have no statements. I am missing January through current for 2021

7 2. Notes/Deeds of Trust (Subpoena Items 1-2, 8)

8 I have a note, deed of trust, and an assignment of deed of trust. I also have
 9 a family rider, and an assignment of deed of trust to Federal Home Loan
 10 Mortgage Corporation. Assuming there are no other documents related to
 11 paragraph 1 and 2 of the subpoena, which requests, “1. Note, promissory
 11 note, endorsements, allonges, riders, attachments, amendments and/or
 11 modifications. “ and “2. The deed of trust or mortgage, with any and all
 11 endorsements, allonges, riders, attachments and/or amendments.”, then we
 11 appear to have these items.

12 3. Statement of Accounts, accountings/etc. (Subpoena Items 3, 4, 6, 7)

13 I have an “Annual Escrow Disclosure” dated May 26, 2015. That is the only
 14 one of these I see. I am missing any others Fifth Third may have prepared
 14 I have inspection reports from Safeguard for 2016-2020. I do not have any
 14 others, so if there are others, they were not produced.

15 I have a loan history statement consisting of 36 pages, bates nos. 126-
 16 161. There are no other loan history statements.

16 There is a loan history payoff dated May 26, 2020, which is bates Nos.
 0228-0229. There are no other loan histories.

17 4. Other documents requested by Subpoena (items 9, 10, 11, 12, and 13)

18 I do not have documents other than those above. If there is anything
 19 applicable, such as a loan history, documents relating to forced placed
 19 insurance, payment of taxes, insurance, etc., I will need that information.

20 Do you have a list of your bates numbered documents so that I may ensure
 20 that I have the same documents that you do? I would appreciate that.

21 Please let me know if you are willing to provide these missing documents,
 22 including any loan history and how payments were applied, payments for
 22 insurance and taxes, etc., please send those as well.

24 24. On September 22, 2021, Aldridge Pite sent an **eighth follow up** letter to the

25 Debtor’s counsel seeking to resolve the Subpoena. Specifically, Aldridge Pite again provided the
 26 Debtor with a catalog of the production. Aldridge Pite informed Debtor the above summary is
 27 inaccurate as Fifth Third previously produced many of the requested documents. Further, Aldridge

1 Pite re-attached the emails where our firm provided the documents to Debtor. In addition, Aldridge
 2 Pite produced additional monthly statements for 2018 - 2021.

3 25. On October 6, 2021, the Court held a **fourth hearing** on the Motion for Protective
 4 Order. At the hearing, the Court instructed counsel to file supplemental declarations in support of
 5 the Status Report.

6 26. On October 22, 2021, Aldridge Pite sent a **ninth follow up** letter to the Debtor's
 7 counsel seeking to resolve the Subpoena.

8 27. Below is a summary of the produced documents as provided to the Debtor's
 9 counsel:

10 Address	11 Servicing Start Date	12 Discovery Produced
13 5218 Misty Morning	14 Confirmation (4/2011) – Pre 15 16 17	18 - Statements produced 8/18/2021 -Statements, Pay Histories, Escrow Histories produced 5/29/2020 Claim with 410(A) history

19
 20 28. With respect to the statements from 2011 – 2014, Aldridge Pite informed Debtor
 21 Fifth Third is unable to produce said documents as the documents are not in Fifth Third's
 22 possession. However, if the statements were sent to the Debtor, she should have access to the same.
 23 Further, Aldridge Pite informed Debtor the loan is de-escrowed. Payment histories have been
 24 produced as well. Upon Debtor's review of the documents provided, Aldridge Pite requested an
 25 updated list of the discoverable documents Debtor is still seeking from Fifth Third. To date, the
 26 Debtor has yet to provide a substantive response.

27 /./.

28 /./.

29. Aldridge Pite has incurred attorneys' fees and costs in responding to the discovery dispute.

I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct and that this declaration was executed at San Diego, CA on October 27, 2021.

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ALDRIDGE PITE, LLP

/s/ Greg Campbell

GREG CAMPBELL
Attorneys for Fifth Third Mortgage Company

1 EDDIE R. JIMENEZ (SBN 10376)
2 ejimenez@aldridgepite.com
3 **ALDRIDGE PITE, LLP**
4 7220 South Cimarron Road, Suite 140
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13 **UNITED STATES BANKRUPTCY COURT**
14 **DISTRICT OF NEVADA**

15 In re
16 SCHULTE PROPERTIES LLC,
17 Debtor.

18 Bankruptcy Case No. 18-12734-mkn
19 Chapter 11

20 **CERTIFICATE OF SERVICE**

21 I, Lauren Timby declare that:

22 I am employed by Aldridge Pite, LLP. My business address is: 4375 Jutland Drive, Suite
23 200; P.O. Box 17933, San Diego, CA 92177-0933. I am over the age of eighteen years and not a
24 party to this cause.

25 On October 27, 2021, I caused the **Supplemental Declaration of Greg Campbell in
26 Support of Fifth Third Mortgage Company's Motion For Protective Order Or, In The
Alternative, Motion For Modification Of Subpoena [Dkt No. 863]** to be served on the parties
27 listed herein via electronic means through the Court's CM/ECF system or by placing a copy
28 thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States
Mail, addressed as follows:

137 /./.

138 /./.

1 /./.

2 Schulte Properties LLC
9811 W. Charleston Blvd Ste 2-351
3 Las Vegas, NV 89117

Matthew L. Johnson
Johnson & Gubler, P.C.
8831 West Sahara Avenue
Las Vegas, NV 89117
annabelle@mjohnsonlaw.com

5 U.S. Trustee
6 Department of Justice
7 300 Las Vegas Boulevard, SO.
Suite 4300 Las Vegas, NV 89101
USTPRegion17.LV. ECF@usdoj.gov

10 /s/ Lauren Timby

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